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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91209617
Party	Plaintiff Xikar, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application Serial No. 85/652,496
filed June 14, 2012 for CICAR

Xikar, Inc.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91209617
)	
Debra Wiseberg)	
d/b/a Bram Warren Company,)	
)	
Applicant.)	
_____)	

**REPLY TO APPLICANT’S RESPONSE TO
OPPOSER’S MOTION TO DISMISS OR, IN THE ALTERNATIVE,
MOTION TO STRIKE APPLICANT’S AMENDED COUNTERCLAIMS**

Opposer, Xikar, Inc. (“Xikar”), hereby files its reply to Applicant Debra Wiseberg’s (“Ms. Wiseberg” or “Bram Warren Company” or “BWC”) Response to Opposer’s Motion to Dismiss or, in the Alternative, Motion to Strike Applicant’s Amended Counterclaims.

I. BWC’s Melancholic Opposition Does not Correct Its Defective Counterclaims

BWC’s response is full of specious and emotionally-charged statements having nothing to do with its counterclaims. The response includes a longwinded version of “David versus Goliath,” which portrays Xikar as an evil corporation that has nothing better to do than harass small competitors such as BWC. Not only is this a ridiculous representation of the parties, but it is completely irrelevant to the present motion. BWC’s narrative is a cheap attempt to detract from, and perhaps compensate for, its deficient counterclaims. As the Board well knows, a motion to dismiss or strike is not about which party can fabricate the best storyline, but

whether the claimant has asserted a plausible claim for relief. BWC's counterclaims are legally and factually defective, and no matter what story BWC concocts to manufacture sympathy, the claims remain facially invalid.

Two main issues are before the Board. The first is whether BWC's amended counterclaims should be dismissed for failure to state a claim upon which relief can be granted. The second is whether the amended counterclaims should be stricken for violating the Board's July 18, 2014 summary judgment decision, which instructed that only valid grounds for cancellation could be asserted in the counterclaims. As outlined in Xikar's motion, BWC's counterclaims can be rejected under either standard because none of them assert a valid claim for relief. Many of the counterclaims are irrelevant and have been misapplied to the facts of this case. Other claims fail to show that every element of the cause of action is met. Three of the counterclaims have been improperly added to case. In short, the claims are deficient on their face and BWC has cited no legal authority to suggest otherwise. Accordingly, Xikar's motion should be granted.

II. The Additional Remedies Requested by Xikar are Not Sanctions

In its response, BWC makes an impassioned argument that it should not be required to obtain counsel or participate in mediation. It accuses Xikar of bullying, trying to strip BWC of its legal rights, and improperly requesting sanctions. None of this is true and the fact BWC would make such accusations is precisely why counsel or mediation is necessary.

Without belaboring the point, Ms. Wiseberg is not an attorney and does not understand trademark law. That is a fact, not a criticism. She is trying to play the role of legal counsel for the company which she owns. She is so emotionally attached to this trademark dispute that she has no idea how badly she misunderstands the issues in the case. The additional

remedies requested by Xikar, namely that BWC obtain counsel or participate in mediation, are not an attempt to sanction or punish Ms. Wiseberg. They are actually the opposite. The additional remedies would allow BWC to obtain some much needed impartial legal advice. It would also allow this dispute to move forward, including having productive settlement discussions.

As stated in Xikar's motion, there have been several attempts to discuss settlement with BWC. Unfortunately, with Ms. Wiseberg acting as her own legal advisor, she lacks any reasonable perspective. She is so entrenched in her cynical distrust of Xikar's counsel that she will not even discuss this matter over the phone. The simple fact is that she needs a third party – either legal counsel or a mediator – to provide some perspective on this matter.

Obviously, Xikar believes the amended counterclaims should be dismissed or stricken. Even after the counterclaims are denied, however, Xikar's opposition of BWC's mark is still at issue. For the sake of both parties moving forward, in addition to rejecting the amended counterclaims, Xikar respectfully requests that BWC be ordered to obtain legal counsel or participate in mediation. Without legal advice BWC will continue stumbling through this proceeding, needlessly wasting the resources of the parties and the Board.

III. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court grant its motion to dismiss or strike BWC's amended counterclaims.

Respectfully submitted,

Dated: October 14, 2014

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing REPLY TO APPLICANT'S RESPONSE TO OPPOSER'S MOTION TO DISMISS OR, IN THE ALTERNATIVE, MOTION TO STRIKE APPLICANT'S AMENDED COUNTERCLAIMS has been served upon Debra Wiseberg d/b/a Bram Warren Company, 18100 S.W. 50 Street, Southwest Ranches, Florida 33331 by deposit in the United States Mail with first class postage thereon fully prepaid, this 14th day of October 2014.

/Ginnie C. Derusseau/

Ginnie C. Derusseau